### THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION







ASSISTANT COMMISSIC

Bureau of Rail & Transit September 5, 2013

Her Excellency, Governor Margaret Wood Hassan and the Honorable Council State House Concord, New Hampshire 03301

#### REQUESTED ACTION

- 1. Authorize the Department of Transportation to enter into a Loan Agreement with the Mount Washington Railway (Vendor #49714), Base Station Road, Mount Washington, NH 03589 in an amount not to exceed \$477,000, pursuant to RSA 228:66-a for the installation of additional track supports and pilings from the date of Governor and Council approval through March 31, 2034. 100% General Funds-Capital.
- 2. Pursuant to RSA 228:66-a, III, the Department has determined as part of the terms and conditions of the loan, a 1% fee be assessed and to authorize the amount of \$4,770 to be approved for payment to the Department of Transportation, Bureau of Rail and Transit for monitoring and compliance of the loan agreement from date of Governor and Council approval through March 31, 2034. 100% Other-Fee Revenue.

Funding is available in Class III Railroad Capital Rail Line Rehabilitation Revolving Loan Fund Account as follows:

04-096-096-960030-9950 RR Capital Rehabilitation Revolving 415-506591 Loan Fund

FY 2014 \$477,000

#### **EXPLANATION**

This fund, first established in 1994, provides loans for railroad rehabilitation and equipment for Class III Railroads and Cog Railroads that operate in the State of New Hampshire. The loan program is administered by the New Hampshire Department of Transportation. Some of the fund's requirements are: the railroad must agree to continue utilization of the line involved to at least eighty (80%) percent of either the average freight tonnage or the annual passenger level for the previous three (3) years; the railroad must maintain the line and all improvements; the State secures a lien on the improvements and/or equipment in an amount at least equal to the principal and interest of the loan, to expire upon repayment of the loan; and the loan is subject to approval by the Governor and Executive Council.

The Department of Transportation solicited proposals for projects to be funded by repayments of previous loans and received one proposal. The proposal met the criteria of the program, but was multifaceted and exceeded the available amount in the fund. The Department and the Mt. Washington Railway agreed that the construction and installation of additional track supports and pilings was a priority and the amount specific to the track supports and pilings is within the limit of funds available. Therefore the loan agreement has been prepared for Governor and Council approval.

Approval of this resolution will authorize the Department of Transportation to provide financial assistance through the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund for the Mount Washington Railway to design and install piers, pilings and supports under the track owned by the Mount Washington Railway. The design and installation of the additional supports will allow the Mount Washington Railway to improve the long-term safety of the passenger excursion service on Mount Washington.

The Loan Agreement between the Mount Washington Railway and the Department of Transportation satisfies all statutory requirements. The Notice of Lien on the improved property specified by RSA 228:66.a-IV has been executed. The Loan Agreement and Notice of Lien have been reviewed and approved by the Department of Justice. Copies of the fully executed Special Agreement, Loan Agreement and Notice of Lien have been provided to the Secretary of State's Office and the Department of Administrative Services. Subsequent to Governor and Council approval, copies of the Special Agreement and Loan Agreement will be on file with the Department of Transportation, and the Notice of Lien will be recorded in the Coos County Registry of Deeds.

The Department is authorized to expend funds, not to exceed \$4,770, to monitor compliance with the Loan Agreement and a Special Agreement executed by the Department of Transportation and the Mount Washington Railway. Once the installation, final testing and the commencement of operation over the upgraded trackage by the Mount Washington Railway is complete, in accordance with procedures established by the Treasury Department, the Loan Agreement will be replaced with a Supplemental Loan Agreement, which will establish the final borrowing rate and repayment schedule.

Your approval of this resolution is respectfully requested.

Sincerely,

Christopher D. Clement, Sr.

Milled Miller

Commissioner

#### **LOAN AGREEMENT**

This Loan Agreement made and entered into this <u>29</u> day of <u>Auxori</u>, 20 <u>13</u> by and between the State of New Hampshire by and through its Department of Transportation situated at PO Box 483, 7 Hazen Drive, Concord, New Hampshire 03302-0483 (hereinafter referred to as the "Department") and the Mount Washington Railway Company with a principal place of business at Base Station Road, Mount Washington, New Hampshire 03589, (hereinafter referred to as the "Railroad"). The Department and Railroad hereby contract and agree:

Loan Terms. The Department agrees to lend to the Railroad, and the Railroad agrees to borrow from the Department, the sum Four Hundred-Seventy Seven Thousand Dollars and No/100 (\$477,000.00). The Railroad may draw upon these funds during the construction period. Interest on the funds drawn during the construction period shall be equal to the twenty-six (26) week U. S. Treasury bill rate as published in the Wall Street Journal for the preceding Monday. The interest on the draw of funds shall be added to the principal and repaid during the term of the loan.

payment amortization.

No later than six months following the anticipated construction completion date of September 30, 2013 the Railroad shall sign a Supplemental Loan Agreement, which will lock in the interest rate and amortization schedule for loan payments. Repayments of the principal and interests shall be quarterly, beginning no later than six (6) months following the anticipated construction completion date of September 30, 2013. Said loan shall have a repayment term of twenty (20) years with level

To fund said loan, the state shall issue General Obligation Capital Improvement Bonds in accordance with RSA 6-A. Per RSA 228:66-a, the principal and interest due by the Railroad "shall be sufficient to fully reimburse the state for the principal and interest payments on that portion of the bonds authorized". The rate of interest paid by the Railroad will produce a level amortization payment of principal and interest, when if examined on an individual payment basis, will be greater or less than the corresponding debt service payments of said bonds; However, the gross payments paid by the Railroad will be equal to the corresponding debt service payments by the state if each are carried out to their full term.

The loan may be prepaid by the Railroad without any prepayment penalty.

2. <u>Security</u>. Pursuant to RSA 228:66-a IV, the Railroad hereby grants to the Department a lien in the property and equipment of the Railroad, including the improvements described in APPENDIX A, in an amount which equals the sum of principal and interest to be repaid by the Railroad in favor of the Department which shall be recorded in the Registry of Deeds in the county in which the Trestle System is located.

- 3. <u>Representations, Warranties and Covenants</u>. The Railroad represents and warrants as follows:
  - 3.1 <u>Corporate Existence</u>. The Railroad is a New Hampshire corporation with authority to do business in the State of New Hampshire.
  - 3.2 <u>Corporate Documents</u>. All its books and records, including without limitation Articles of Incorporation, Bylaws, minute books and books of account, are accurate and up-to-date.

#### 4. Affirmative Covenants. The Railroad covets and agrees that:

- 4.1 The Railroad shall continue utilization of the line involved on an annual basis at a passenger level of at least 80 percent of the Railroad's prior 3 years preceding this agreement, per RSA 228:66-a.
- 4.2 The Railroad assures and commits by this Loan Agreement that the operator and its successors and assigns shall continue to maintain the Trestle System in accordance with New Hampshire Department of Transportation regulations and standards for the term of the loan. Any inspector from the Department may enter upon the Railroad's property and inspect said rail properties for the purpose of insuring compliance with their terms of this ARTICLE.
- 4.3 The work shall be satisfactorily completed if and when the scope of work defined in APPENDIX A has been accomplished in a workmanlike manner consistent with customary and usual railroad practices. Upon completion of work, or any portion thereof, the Railroad shall notify the Department in writing that the work is complete and the Department shall make a final inspection of all work performed within 15 days of the delivery of said notice. If the Department is satisfied that the work has been satisfactorily completed, it shall give written notice to that effect to the Railroad. If the Department is not so satisfied, it shall state in writing giving to the Railroad the reasons why.

#### 5. Additional Covenants and Assurances.

5.1 Records, Etc. The Railroad shall at all times keep accurate records of the railroad materials and will permit Department or its agents or representatives at any reasonable time and from time to time to visit the Railroad's place(s) of business, without hindrance or delay, to inspect the work performed on the railroad pursuant to APPENDIX A. If the Department believes that any work is not being performed in accordance with customary and reasonable

railroad practices, it shall so notify the Railroad in writing within 10 days of the inspection and examine, check, audit and make copies and abstracts from the Railroad's records and books of account (including without limitation corporate minutes, and records, journals, orders, receipts and correspondence relating to real estate).

#### 6. Indemnification.

- 6.1 The Railroad shall indemnify and save harmless the State of New Hampshire, the Department, its officers, agents and employees from all suits, actions or claims of any character, name, and description brought for, or on account of any injuries or damages received or sustained by any person, persons, or property by or from the Railroad or by or in consequence of any neglect in performing the work described in APPENDIX A, or by or on account of any act or omission, neglect or misconduct of said Railroad.
- 7. <u>Events of Default</u>. The occurrence of any one or more of the following events, which remains uncured for a period of 30 days from the date that the Department provides written notice of such to the Railroad, shall constitute an event of default:
  - 7.1 Nonpayment. Failure to pay principal or interest when due;
  - 7.2 <u>Breach of This Loan Agreement</u>. Breach by the Railroad of any of the provisions of this Loan Agreement;
  - 7.3 <u>Breach of Representation or Warranty</u>. If any representation or warranty made by the Railroad herein or in any certificate or statement furnished to the Department by or on behalf of the Railroad shall prove to have been incorrect or misleading in any material respect when made or furnished;
- 8. **Department Rights on Default**. Upon the occurrence of an event of default under Section 7 above:
  - 8.1 <u>Acceleration.</u> The Department may at any time or times thereafter declare the unpaid principal and interest under this Loan Agreement immediately due and payable whereupon the same shall become immediately due and payable without any notice or demand.

#### 9. General.

9.1 <u>No Assignment</u>. The Railroad shall not assign this Loan Agreement or its rights hereunder without the prior written consent of the Department.

- 9.2 <u>Successors and Assigns</u>. This Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, personal representatives and assigns.
- 9.3 <u>Governing Law; Jurisdiction; Waiver of Jury Trial</u>. This Loan Agreement shall be interpreted in accordance with and governed by the laws of New Hampshire, Chapter 310:3 Laws of 1997.
- 9.4 Entire Loan Agreement. This Loan Agreement which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and superseding all prior agreements and understanding relating hereto.

IN WITNESS WHEREOF, the Department and the Railroad have executed this Loan Agreement by their duly authorized agents on this <u>391H</u> day of <u>AUGUS</u>, 20 <u>(3</u>.

In the presence of:

STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

J. THOMAS MANSEAU

Patrick Herlihy, Difector of Aeronautics Rail and Transit

THE STATE OF NEW HAMPSHIRE COUNTY OF MERRIMACK

On this  $\frac{397H}{}$  day of  $\frac{Av G-v S r}{}$ , 20 13, before me,  $\frac{\sqrt{1404.85}}{}$  MANSEAU the undersigned officer, personally appeared Patrick Herlihy known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

J. THOMAS MANSEAU Motary Public
My Commission Fig. 1, 2015

In the presence of:	MOUNT WASHINGTON RAILWAY Company
Karen L. Clauss	Wayne W. Presby, President
officer, personally appeared Wayne W. Pres	, before me,
IN WITNESS WHEREOF, I hereunto set my	hand and official seal.  Huand. Clause  NOTARY PUBLIC
	KAREN L. CLAUSS, Notary Public My Commission Expires February 4, 2014
This is to certify that the above Agreement has form and execution.	as been reviewed by this office and is approved as to
	OFFICE OF ATTORNEY GENERAL
DATE: September 3, 20 13	Assistant Attorney General

APPROVED by Governor and Executive Council on \_\_\_\_\_\_, 20 \_\_\_\_, Item # \_\_\_\_\_.

ATTEST:

Secretary of State

#### APPENDIX A

The work shall consist of the purchase of materials and the design and installation of trestle supports and bracing on the track owned by the Mount Washington Railway Company.

The total cost of the project is as follows:

Design and Construction of Trestle Supports	\$ 472,230
Project Oversight- Bureau	4,770
TOTAL NET PROJECT COST	\$ 477,000

#### CERTIFICATE OF VOTE

I, Joel Bedor, hereby certify that I am duly elected Treasurer of the Mount Washington Railway Company. I hereby certify the following is a true copy of a vote taken at a meeting of the Mount Washington Railway Company, duly called and held on  $\frac{7}{2}$ , 2013, at which a quorum of the Board was present and voting.

Voted: That Wayne W. Presby is the President of the Mount Washington Railway Company and is empowered to enter into a Special Agreement, which encompass a Loan Agreement and Notice Of Lien and Supplemental Loan Agreement, with the State of New Hampshire to assist in the financing of the purchasing of a diesel engine and other locomotive material and the design and construction of a locomotive for use for the Mount Washington Railway Company pursuant to the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund under RSA 228:66-a.

I hereby certify that the above has not been amended or repealed, and remains in full force and effect as of $\frac{7}{\cancel{13}}$ .
Attested:  7/29/3  Date  Attested:  Joel Bedor, Treasurer
CORPORATE SEAL
THE STATE OF NEW HAMPSHIRE COUNTY OF
On this the 29th day of Joly ,2013 before me, Joel J Before me, the undersigned officer, personally appeared known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.
IN WITNESS WHEREOF I hereunto set my hand and official seal.
Notary Public/Justice of the Peace  Notary Public/Justice of the Peace  COMMISSION  COMMIS

### State of New Hampshire Department of State

#### **CERTIFICATE**

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that MOUNT WASHINGTON RAILWAY COMPANY is a New Hampshire corporation, formed by the laws of 1858 effective June 25, 1858. I further certify that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 13<sup>th</sup> day of June, A.D. 2013

William M. Gardner Secretary of State

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#### NOTICE OF LIEN

The State of New Hampshire and the Mount Washington Railway Company, with an address of Base Station Road, Mount Washington, New Hampshire 03589, give notice that a lien equal to the amount of \$477,000.00 and any interest, which may hereafter accrue on that amount, to be repaid by the Railroad, is created in favor of the State of New Hampshire which is a lien on the improved property under a Loan Agreement between the State of New Hampshire and the Mount Washington Railway Company, dated June 12, 2013. The improved property is more particularly described below.

The lien is created by operation of law, pursuant to RSA 288:66.a-IV, and shall expire only when the loan is repaid. The loan is scheduled to be repaid on August 1, 2034.

The Notice of Lien shall be recorded in the Coos County Registry of Deeds.

#### PROPERTY DESCRIPTION

All the property, real and personal, that is located on the Mount Washington Railway Company's Line in the unincorporated area of Thompson and Meserves Purchase, New Hampshire, and more specifically described as follows:

1.) All the property, real and personal, but not limited to that described in Mount Washington Railway Company's Loan Agreement dated June 12, 2013, for participation in the State of New Hampshire's Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund, on file with New Hampshire Department of Transportation, Bureau of Rail and Transit.

IN WITNESS WHEREOF the parties have caused this NOTICE OF LIEN to be executed by their duly authorized agents.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

By:

Duly Authorized

MOUNT WASHINGTON BAJILWAY

Dated By: Manufacture By: Manu

Legislative Corporation, on behalf of the corporation.

County of Goos Merrimack

(title) Public

MEGAN C. NEAL, Notary Public My Commission Expires March 16, 2016

#### SPECIAL AGREEMENT

#### MOUNT WASHINGTON RAILWAY COMPANY

#### STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION BUREAU OF RAIL AND TRANSIT

#### TRESTLE SUPPORT AND BRACING PROJECT

June 12, 2013

#### SPECIAL AGREEMENT

This Special Agreement made and entered into this	dorr of	20	h
	day of	_, 20,	•
and between the State of New Hampshire (hereinafter referred to	as the "State") by	and throu	ıgh
its Department of Transportation, Bureau of Rail and Transit	(hereinafter referr	ed to as t	the
"Bureau"), and Mount Washington Railway Company, a railroad	corporation having	its princip	pal
place of business at Base Station Road, Mount Washington, New	Hampshire 03589	, (hereinaf	ter
referred to as the "Railroad")			

The State and Railroad agree to the articles listed below:

#### ARTICLE I LOAN AGREEMENT

The Bureau shall prepare a Loan Agreement under the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund to assist in the funding the railroad rehabilitation project described in ARTICLE II and EXHIBIT A. The Bureau shall administer the Loan Agreement funds in accordance with State requirements, and the Railroad may periodically draw down funds during the construction period. The actual project cost shall not exceed 99% of the actual Loan Agreement or a maximum of \$472,230.00.

#### ARTICLE II PROJECT DESCRIPTION

The work shall consist of the purchase of materials and the design, construction and installation of new trestle supports and bracing to upgrade the track structure owned by the Railroad.

The work performed is specifically described in EXHIBIT A that is attached and made a part of this Special Agreement.

#### ARTICLE III PROJECT OVERSIGHT FEE - BUREAU

It is agreed the Railroad shall pay the Bureau a Project Oversight Fee for required inspections and administrative work. This Project Oversight Fee will be 1% of the actual project cost or a maximum of \$4,770.00.

### ARTICLE IV ACCEPTANCE OF PROJECT AND INSPECTION

The parties agree that the Bureau must inspect and accept the trestle and other structural materials and review and approve all work on the design and construction of the trestle in order to insure compliance with this Special Agreement.

#### ARTICLE V MAINTENANCE

The Railroad agrees and commits, by this Special Agreement, that the Railroad, its successors and assigns, shall continue to maintain and operate the rail line in accordance with New Hampshire Department of Transportation regulations and standards for at least the period until the principal and interest of the loan have been repaid by the Railroad. An inspector from the Bureau shall periodically inspect the trestle system and operation of the rail line for the purpose of insuring compliance with the terms of this ARTICLE.

#### ARTICLE VI CONTINUATION OF SERVICE AND LIEN

The Railroad, its successors and assigns, hereby commits to continue service and to maintain the trestle system in accordance with New Hampshire Department of Transportation regulations and standards for the mountain railroad. The Railroad acknowledges that a lien against the Railroad shall be created in favor of the State in an amount equal to the principal and interest of the Loan Agreement. The lien shall continue in force for at least the period until the Loan Agreement has been repaid by the Railroad. The lien shall be recorded in Coos County Registry of Deeds in which the Railroad's principal place of business is situated. In the event that the Railroad is sold, the Bureau may assign the outstanding principal and interest of the Loan Agreement to an approved purchaser. The Bureau acknowledges that the lien against the Railroad is specific to the trestle system constructed including costs incurred during the project and interest, which may accrue on that amount and is subordinate in all respects to the balance of any Railroad mortgages.

#### ARTICLE VII NO ASSUMPTION OF OBLIGATIONS

The Bureau acknowledges and agrees that the execution of this Special Agreement shall not impose upon the Railroad's mortgagors any obligations to perform nor shall it be deemed to be an assumption by the Railroad's mortgagors of the obligations and liabilities of the Railroad under this Special Agreement.

# ARTICLE VIII COMPLIANCE WITH FEDERAL STATUTES, REGULATIONS AND EXECUTIVE ORDER

The Railroad shall comply with all applicable Federal, State and local laws and regulations. In compliance with these laws, the Railroad agrees that, among other things, it will take all of the steps necessary to conform to the requirements of the statutes and executive orders and respective regulations issued there under.

### ARTICLE IX ELIGIBILITY FOR FINANCIAL ASSISTANCE

The Railroad certifies that it will utilize the line to a level equal to eighty (80%) percent of their annual passenger level for the prior three (3) years preceding this Special Agreement per RSA 228:66-a II.

### ARTICLE X INDEMNIFICATION

The Railroad shall defend, indemnify and save harmless the State and the Bureau (including its officers and employees) from all suits, actions or claims of any character, name or description brought for, or on account of any injuries or damages arising out of the design and construction of the trestle project. Nothing contained herein shall constitute a waiver or release of any claims the Railroad may have against any third person arising out of or related in any way to the trestle and bridge materials and labor used in the design and construction of the trestle system project. The parties specifically agree that nothing contained herein shall waive any claim the Railroad may have for breach of warranty or breach of contract against the contractor, its agents, employees, officers, directors, sub-contractors or other related persons of any type, name or description, nor shall anything contained herein constitute a waiver or release of any claim the Railroad may have against any third party on account of any act of omission, neglect, misconduct, malfeasance or misfeasance relating to the work to be performed under this Special Agreement.

### ARTICLE XI NO THIRD PARTY BENEFICIARY

It is specifically agreed between the parties executing this Special Agreement that it is not intended by any of the articles of the Special Agreement to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Special Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Special Agreement. The duties, obligations, and responsibilities of the parties to this Special Agreement with respect to third parties shall remain as imposed by law.

### ARTICLE XII NO WAIVER OF SOVEREIGN IMMUNITY

Nothing contained in this Special Agreement shall be construed as, or be deemed to be, a waiver of the sovereign immunity of the State of New Hampshire.

### ARTICLE XIII CONSTRUCTION OF SPECIAL AGREEMENT AND TERMS

This Special Agreement is in accordance with the laws of the State of New Hampshire and is binding upon the parties and their respective successors and assigns. The captions are used only as a matter of convenience and are not to be considered a part of this Special Agreement or to be used in determining the intent of the parties hereto.

### ARTICLE XIV ENTIRE SPECIAL AGREEMENT

This Special Agreement, which shall be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Special Agreement and understanding between the parties and supersedes all prior agreements and understandings relating thereto.

#### ARTICLE XV SEVERABILITY

In the event any part of this Special Agreement is void or unenforceable, all other provisions shall continue in full force and effect.

#### ARTICLE XVI EFFECTIVE DATE OF SPECIAL AGREEMENT

This Special Agreement, and all obligations of the parties hereunder, shall become effective on the date of the Loan Agreement's approval by the Governor and Executive Council.

IN WITNESS WHEREOF, the parties hereto have caused this Special Agreement to be executed by their duly authorized agents on the day and year first above written.

	STATE OF NEW HAMPSHIRE
In the presence of:	DEPARTMENT OF TRANSPORTATION
J. THOMAS MANUSEAU	1660
	Patrick Herlihy, Director of Aeronautics
THE STATE OF NEW HAMPSHIRE COUNTY OF MERRIMACK	Rail and Transit
On this the Jark day of Aud personally appeared Patrick Herlihy known to whose name is subscribed to the within instrusame for the purposes therein contained.	, 20 13 before me, the undersigned officer, o me (or satisfactorily proven) to be the person ment and acknowledged that he has executed the
IN WITNESS WHEREOF, I hereunto s	et my hand and official seal.
	Affina In
J. THOMAS MANSEAU, Notary Public My Commission Expires November 17, 2015	Notary Public/Justice of the Peace
In the presence of:	OUNT WASHINGTON RAILWAY COMPANY  Wayne W. Presby, President
THE STATE OF NEW HAMPSHIRE	
COUNTY OF Grafton	
personally appeared Wayne W. Presby known	to me (or eatisfactorily proven) to be the person ment and acknowledged that he has executed the
IN WITNESS WHEREOF I hereunto set my h	and and official seal.
	Karen L. Clauss
KAREN L. CLAUSS, Notary Public  Viv Commission Expires February 4, 2014	Notary Public/Justice of the Peace
This is to certify that the above-reference office, and is approved as to form and execution.	ed Special Agreement has been reviewed by this
	OFFICE OF ATTORNEY GENERAL
DATE: September 3, 20 13	BY: Assistant Attorney General

#### EXHIBIT A

The work shall consist of the purchase of materials and the design and installation of trestle supports and bracing on the track owned by the Mount Washington Railway Company.

The total cost of the project is as follows:

Design and Construction of Trestle Supports	\$ 472,230
Project Oversight- Bureau	4,770
TOTAL NET PROJECT COST	\$ 477,000

#### CERTIFICATE OF VOTE

I hereby certify that Wayne W. Presby is the President of the Mount Washington Railway Company.  I hereby certify that Wayne W. Presby is the President of the Mount Washington Railway Company and is empowered to enter into a Special Agreement, which encompass a Loar Agreement and Notice Of Lien and Supplemental Loan Agreement, with the State of New Hampshire to assist in the financing of the rehabilitation and installation of trestle supports for use for the Mount Washington Railway Company pursuant to the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund under RSA 228:66-a.  I hereby certify that the above has not been amended or repealed, and remains in full force and effect as of
Company and is empowered to enter into a Special Agreement, which encompass a Loar Agreement and Notice Of Lien and Supplemental Loan Agreement, with the State of New Hampshire to assist in the financing of the rehabilitation and installation of trestle supports for use for the Mount Washington Railway Company pursuant to the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund under RSA 228:66-a.  I hereby certify that the above has not been amended or repealed, and remains in full force and effect as of  Attested:  Attested:  CORPORATE SEAL  THE STATE OF NEW HAMPSHIRE  COUNTY OF Lattor  On this the Day day of June, the undersigned officer, personally appeared In Discorption known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.
Attested:    Date   Attested:   Attested:
Date  CORPORATE SEAL  THE STATE OF NEW HAMPSHIRE COUNTY OF June  On this the Jay of June, the undersigned officer, the undersigned officer, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.
THE STATE OF NEW HAMPSHIRE COUNTY OF June  On this the day of June, the undersigned officer, personally appeared m preson known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.
On this the day of, 20, 20, the undersigned officer, personally appeared known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.
personally appeared <u>M. Push</u> , the undersigned officer, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.
IN WITNESS WHEREOF I hereunto set my hand and official seal.
Notary Public/Justice of the Peace

KAREN L. CLAUSS, Notary Public My Commission Expires February 4, 2014

# TITLE XX TRANSPORTATION

## CHAPTER 228 ADMINISTRATION OF TRANSPORTATION LAWS

#### Railroads and Other Common Carriers

Section 228:66-a

228:66-a Rehabilitating Class III Railroads and Cog Railroads; Revolving Loan Fund; Bonds Authorized. –

I. There is established in the office of the state treasurer a fund to be known as the class III railroad and cog railroad capital rail line rehabilitation and equipment revolving loan fund which shall be kept separate and distinct from all other funds. Moneys in the fund shall be nonlapsing and shall be continually appropriated to the bureau of rail and transit, department of transportation, and shall be spent on rehabilitating the rail lines and the purchasing of equipment of class III railroads and cog railroads, which rail lines, equipment, and railroads shall meet the requirements of the benefit/cost analysis prepared by the department of transportation's bureau of rail and transit. Loans provided to operators of class III railroads and cog railroads for rehabilitating the rail lines and equipment purchases shall be approved by the governor and council.

II. The operator of the class III railroad or cog railroad provided a loan under this section shall be required to furnish assurance by signed agreement with the state to continue utilization of the line involved on an annual basis at a tonnage level of at least 80 percent of their annual tonnage average over the 3 years preceding the agreement, provided that enforcement of such assurance shall be preceded by a finding by the commissioner that any shipping rate increases during such period are reasonable, or a continued utilization of the line involved on an annual basis at a passenger level of at least 80 percent of their prior 3 years preceding the agreement.

III. The operator of the class III railroad or cog railroad shall repay any loan funded pursuant to paragraph I on such terms and conditions as are recommended by the bureau of rail and transit, department of transportation. The term of the loan shall be no less than 5 and no longer than 20 years and shall, to the extent possible and consistent with this section, be determined so as to match the useful life of the improvements funded by the loan. The terms and conditions shall be contained in the binding agreement between the state and the operator of the class III railroad or cog railroad and shall be sufficient to fully reimburse the state for the principal and interest payments on that portion of the bonds authorized to fund the loan. All money received through reimbursement shall be deposited by the state treasurer in the class III railroad and cog railroad capital rail line rehabilitation and equipment revolving loan fund.

IV. A lien on the property and equipment of the class III railroad or cog railroad including the improved property or equipment shall be created in favor of the state in an amount which equals the sum of principal and interest to be repaid by the operator of the class III railroad or cog railroad. The lien shall be recorded in the registry of deeds of the county or counties in which the improved property is situated and shall not supersede any pre-existing lien created by a mortgage affecting such property. The lien shall expire only when the loan has been fully repaid.

V. To provide funds for the revolving loan fund established pursuant to this section, the state treasurer, as may be requested from time to time by the bureau of rail and transit, department of transportation, is authorized to borrow from time to time upon the credit of the state such amounts so

that the total state obligation shall at no time exceed \$4,000,000 and for said purposes may issue bonds and notes at such time in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A. The department shall request and the treasurer shall issue bonds only for such amounts from time to time as are required for the purposes of this section and provided that the principal and interest payments can be satisfied from existing sums in the fund established in paragraph I.

VI. The payments of principal and interest on the bonds issued under paragraph V shall be made when due from the special fund established by paragraph I.

VII. For the purpose of this section, a "class III railroad" shall be a freight railroad or an intrastate passenger excursion railroad.

Source. 1997, 310:3, eff. July 1, 1997.